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| DONNA L. SOTO, ADMINISTRATRIX OF       | ) | SUPREME COURT        |
| THE ESTATE OF VICTORIA L. SOTO, ET AL, | ) |                      |
| Plaintiffs/Appellants                  | ) | STATE OF CONNECTICUT |
| v.                                     | ) |                      |
|  | ) |                      |
| BUSHMASTER FIREARMS INTERNATIONAL,     | ) |                      |
| LLC, A/K/A, ET AL,                     | ) |                      |
| Defendants/Appellees                   | ) | MARCH 28, 2017       |

### **MOTION FOR RECONSIDERATION**

Pursuant to Rule of Appellate Procedure 71-5, defendants-appellees Camfour, Inc. and Camfour Holding, Inc. s/h/a Camfour Holding, LLP a/k/a Camfour Holding, Inc. (collectively referred to as “Camfour”) by and through their attorneys, Renzulli Law Firm, LLP, move for reconsideration of this Court’s decision officially released on March 19, 2019.

Plaintiffs-appellants (“plaintiffs”) have been advised of the grounds on which Camfour seeks reconsideration and were asked to voluntarily dismiss Camfour because this Court’s March 19, 2019 decision dismissed all of plaintiffs’ claims except for their marketing and advertising claims, which were not raised against Camfour. Plaintiffs responded that they would not agree to do so at this time, and sought to revisit the issue when the case is returned to the trial court. Because of the ten day deadline imposed by Rule 71-5, Camfour is required to file a motion for reconsideration at this time.

#### **I. Brief History of the Case**

This case arises from the shooting at Sandy Hook Elementary School in 2012. The trial court granted defendants’ motions to strike plaintiffs’ First Amended Complaint and entered judgments in defendants’ favor on November 1 and 18, 2016. Plaintiffs appealed both judgments,

and the appeals were transferred to this Court on November 29, 2016. On March 19, 2019, this Court officially released its decision in which it agreed with defendants:

that most of the plaintiffs' claims and legal theories are precluded by established Connecticut law and/or PLCAA. For example, we expressly reject the plaintiffs' theory that, merely by selling semiautomatic rifles—which were legal at the time—to the civilian population, the defendants became responsible for any crimes committed with those weapons.

*Soto v. Bushmaster Firearms, LLC*, 331 Conn. 53, 65 (2019). This Court's decision allowed only "one narrow legal theory" to proceed, *i.e.*, plaintiffs' claim that "defendants knowingly marketed, advertised, and promoted the [Bushmaster] XM15-E2S [rifle] for civilians to use to carry out offensive, military style combat missions against their perceived enemies," on the basis that such use "would be illegal" and violate the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42-110a *et seq.* because "Connecticut law does not permit advertisements that promote or encourage violent, criminal behavior." *Id.* at 65-66. See also *id.* 66 (affirming the "trial court's judgment insofar as that court struck the plaintiffs' claims predicated on all other legal theories").

## **II. Specific Facts Relied On**

There were a total of eleven defendants named in plaintiffs' First Amended Complaint, which were grouped into three different categories: (1) Bushmaster Firearms, Bushmaster Firearms, Inc., Bushmaster Firearms International, LLC, Remington Outdoor Company, Inc., Remington Arms Company, LLC, Bushmaster Holdings, LLC, and Freedom Group, Inc. (collectively referred to as the "Bushmaster defendants"); (2) Camfour, Inc., and Camfour Holding, LLP a/k/a Camfour Holding, Inc. (collectively referred to as the "Camfour defendants"); and (3) Riverview Sales, Inc., and David LaGuercia (collectively referred to as the "Riverview defendants"). 331 Conn. at 67 n.3-5. This Court described the categories of defendants as

follows: the “Bushmaster defendants (Remington), one or more of which is alleged to have manufactured the Bushmaster XM15-E2S semiautomatic rifle that was used in the crimes; the Camfour defendants, distributors that allegedly purchased the rifle from Remington and resold it to the Riverview defendants; and the Riverview defendants, retailers that allegedly sold the rifle to Adam Lanza’s mother, Nancy Lanza, in March, 2010.” *Id.* at 67 (footnotes omitted). After identifying the various defendants and their different roles in the manufacture and sale of the Bushmaster XM15-E2S rifle (“Subject Rifle”), however, this Court generally referred to all three categories of defendants collectively in addressing the viability of plaintiffs’ claims against them.

In their First Amended Complaint, however, plaintiffs had raised their claims alleging that the advertising and marketing of the Subject Rifle violated CUTPA – the sole claim that this Court allowed to proceed – exclusively against the Bushmaster defendants. Section C of the First Amended Complaint, captioned “A ‘Civilian’ Weapon Marketed for Combat,” contains plaintiffs’ allegations that the marketing and advertising of the Subject Rifle violated CUTPA. These allegations are raised solely against the Bushmaster defendants:

75. The uniquely military characteristics of the AR-15 are not lost on the Bushmaster Defendants.

76. Indeed, the Bushmaster Defendants attract buyers by extolling the militaristic and assaultive qualities of their AR-15 rifles, including the XM15-E2S.

77. The Bushmaster Defendants promote their AR-15s by advertising that the most elite branches of the military - including Special Forces, SEALs, Green Berets, and Army Rangers - have used them.

78. The Bushmaster Defendants tout Bushmaster rifle barrels as "the finest AR15-Type/ M16-Type barrels made," promising that they "provide the same matte black, nonreflective finish found on quality military-type arms."

79. When the Bushmaster Defendants rolled out a new AR-15 rifle model, defendants' advertising lauded the gun as "the uncompromising choice when you demand a rifle as mission-adaptable as you are."

80. A Bushmaster product catalogue shows soldiers moving on patrol through jungles, armed with Bushmaster rifles. Superimposed over the silhouette of a soldier holding his helmet against the backdrop of an American flag is text that reads: "When you need to perform under pressure, Bushmaster delivers."

81. In another Bushmaster product catalogue, firearms like the XM15-E2S are advertised with the slogan, "military-proven performance."

82. The Bushmaster Defendants have promoted one of their "civilian" rifles as "the ultimate combat weapons system."

83. The Bushmaster Defendants' marketing invokes the unparalleled destructive power of their AR-15 rifles. In one product catalogue, advertising copy above a close-up of an AR-15 reads: "Forces of opposition, bow down. You are single-handedly outnumbered."

84. The Bushmaster Defendants' militaristic marketing reinforces the image of the AR-15 as a combat weapon used for the purpose of waging war and killing human beings.

85. This marketing tactic dovetails with the widespread popularity of realistic and addictive first-person shooter games- such as "Call of Duty" - that prominently feature AR-15s and reward players for "head shots" and "kill streaks," among other assaultive and violent "achievements."

86. It is widely known that such games expose players to intensely realistic tactical scenarios and teach assaultive weapon techniques such as taped reloads, by which high-capacity magazines are taped together to reduce reloading time.

87. The Bushmaster Defendants further promote the use of the XM15-E2S and similar rifles as combat weapons by designating in their product catalogues that 30-round magazines are "standard" for those models. The Bushmaster Defendants even include a 30-round magazine with each purchased AR-15.

88. By contrast, the Bushmaster Defendants' hunting and sporting rifles come equipped with significantly less ammunition.

89. According to the Bushmaster Defendants, 5-round magazines are "standard" for the .450 Bushmaster rifle, which is advertised as "suitable for all North American big game."

90. According to the Bushmaster Defendants, 5-round magazines are "standard" for the Bushmaster "Predator Rifle," which is described as "the ultimate predator-hunting carry rifle."

91. According to the Bushmaster Defendants, 5-round magazines are "standard" for the Bushmaster "Varminter Rifle," which is "built specifically for varmint hunters."

92. According to the Bushmaster Defendants, 10-round magazines are "standard" for the Bushmaster "Competition Rifle."

A074-76 (First Am. Compl. ¶¶ 75-92).

Based on these factual allegations that had been raised solely against the Bushmaster defendants, plaintiffs only raised their marketing and advertising claims – the only claims this Court allowed to proceed – against the Bushmaster defendants. See A087 (First Am. Compl. ¶ 219) ("the Bushmaster Defendants unethically, oppressively, immorally, and unscrupulously marketed and promoted the assaultive qualities and military uses of AR-15s to civilian purchasers of these weapons.").

In discussing plaintiffs' marketing and advertising claims, however, this Court referred generically to "defendants" and did not address the fact that such claims had been raised exclusively against the Bushmaster defendants:

The plaintiffs' second theory of liability is that the defendants advertised and marketed the XM15-E2S in an unethical, oppressive, immoral and unscrupulous manner. They contend that the defendants have sought to grow the AR-15 market by extolling the militaristic and assaultive qualities of their AR-15 rifles and, specifically, the weapon's suitability for offensive combat missions. The plaintiffs argue that the defendants' militaristic marketing reinforces the image of the AR-15 as a combat weapon that is intended to be used for the purposes of waging war and killing human beings. Consistent with that image, the defendants further promoted the XM15-E2S as a combat weapon system by designating in their product catalogues that the rifle comes "standard" with a 30 round magazine which, the plaintiffs allege, differs from how the defendants promote and sell rifles for legal civilian purposes such as hunting and sport shooting.

The plaintiffs further contend that the defendants unethically promoted their assault weapons for offensive, military style missions by publishing advertisements and distributing product catalogs that (1) promote the AR-15 as “the uncompromising choice when you demand a rifle as mission adaptable as you are,” (2) depict soldiers moving on patrol through jungles, armed with Bushmaster rifles, (3) feature the slogan “[w]hen you need to perform under pressure, Bushmaster delivers,” superimposed over the silhouette of a soldier holding his helmet against the backdrop of an American flag, (4) tout the “military proven performance” of firearms like the XM15-E2S, (5) promote civilian rifles as “the ultimate combat weapons system,” (6) invoke the unparalleled destructive power of their AR-15 rifles, (7) claim that the most elite branches of the United States military, including the United States Navy SEALs, the United States Army Green Berets and Army Rangers, and other special forces, have used the AR-15, and (8) depict a close-up of an AR-15 with the following slogan: “Forces of opposition, bow down. You are single-handedly outnumbered.”

*Soto*, 331 Conn. at 73-74 (emphasis added). As shown by the paragraphs in plaintiffs’ First Amended Complaint in which these allegations were raised, they were specifically pled against only the Bushmaster defendants, not all eleven defendants named in the case. See A074-76 (First Am. Compl. ¶¶ 75-92).

### **III. Legal Grounds Relied On**

This motion for reconsideration is filed pursuant to Rule of Appellate Procedure 71-5. Based on the corrective purposes of a motion for reconsideration, this Court has broad discretion to modify or reverse its decision. *Skakel v. Commissioner of Correction*, 329 Conn. 1, 16 (2018). Accordingly, a motion for reconsideration is:

intended not only to address unexpected developments in the law and jurisdictional errors, but also to serve as a check on the court’s initial conclusion. Thus, when a justice of this court reviews his or her initial decision and finds a mistake, it is incumbent on that justice to change his or her vote accordingly, even if the motion for reconsideration fails to raise a new issue, a new line of reasoning, new facts, or new law.

*Id.* at 19. See also *id.* at 63 (noting that one of the usual grounds for granting a motion for reconsideration is when “there has been a misapprehension of facts”) (D’Auria, J., concurring) (quoting *Chapman Lumber, Inc. v. Tager*, 288 Conn. 69, 94 n.28 (2008)).

As is evident from the sections of the First Amended Complaint quoted above, plaintiffs’ marketing and advertising claims were raised solely against the Bushmaster defendants. This Court misapprehended that fact in its March 19, 2019 decision by referring to defendants collectively and proceeding as if all of plaintiffs’ claims had been raised against all defendants. Based on this misapprehension of the facts, this Court allowed marketing and advertising claims against the Camfour defendants to proceed, despite the fact that plaintiffs had never raised such claims against Camfour in their First Amended Complaint. This Court should therefore reconsider its March 19, 2019 decision on the basis that it allowed non-existing marketing and advertising claims to proceed against Camfour, despite affirming the dismissal of all of the claims that plaintiffs had actually raised against Camfour.

#### **IV. Conclusion**

For the above reasons, Camfour respectfully requests that this Court grant their motion for reconsideration and, upon reconsideration, dismiss plaintiffs’ claims against them in their entirety on the basis that plaintiffs’ marketing and advertising claims – the sole claims that this Court allowed to proceed – were raised solely against the Bushmaster defendants, and grant such other relief as it deems just and proper.

Respectfully submitted,

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## CERTIFICATION OF SERVICE AND COMPLIANCE

The undersigned hereby certifies, pursuant to Practice Book Section 62-7, as follows: (1) a copy of the foregoing Motion has delivered by email to all counsel of record as listed below on this 28th day of March, 2019; (2) the document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and (3) that the document complies with all applicable rules of appellate procedure.

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